

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 January 2022

Public Authority: Blackburn with Darwen Borough Council
Address: Town Hall
Blackburn
Lancashire
BB1 7DY

Decision (including any steps ordered)

1. The complainant requested information relating to animal accommodation. Blackburn with Darwen Borough Council (the "council") refused the request under section 12 because it considered the cost of compliance would exceed the appropriate limit. It also applied the exemption in section 21 (information accessible by other means) in relation to information available on its website.
2. The Commissioner's decision is that the council correctly confirmed that it did not hold the information in part 6 of the request and complied with section 1, that it correctly applied section 12 to parts 1-5 of the request and that it correctly applied the exemption in section 21 but failed to provide advice and assistance and breached section 16.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 9 August 2021, the complainant wrote to the council and requested information in the following terms:

"For the periods 1st April 2019 to 31st March 2020 and 1st April 2020 to 31st March 2021, please provide the following information:

1. The names and addresses of the suppliers used by the Council for the accommodation of people's animals in accordance with the above legislation. Please provide a separate breakdown for each financial year.

2. The total amount paid to each supplier. Please provide a separate breakdown for each supplier for each financial year.

3. The total number of dogs accommodated in accordance with the above legislation. Please provide a separate breakdown for each financial year.

4. The total number of cats accommodated in accordance with the above legislation. Please provide a separate breakdown for each financial year.

5. The amount charged by each supplier per night for providing accommodation for a) cats, b) dogs and c) any other animal.

6. A copy of any procedures, policies or contracts in place in relation to the accommodation of people's animals in accordance with the above legislation. This should include details of any welfare provisions stipulated by the Council, details of any procedures for monitoring the animals' welfare, any time limit beyond which the accommodation would be reviewed and the procedure adopted when the owner dies or relinquishes ownership."

5. The council responded on 7 September 2021. It stated that it was refusing the request under section 12 of the FOIA because it considered the cost of compliance would exceed the cost limit.
6. Following an internal review the council wrote to the complainant on 7 September 2021 and confirmed that it was maintaining its position.
7. On 20 September 2021 the complainant refined their request in the following manner:

"In relation to parts 1 to 4 of my request, I am happy for my request for information to be restricted to information which can be located by the Council using the following search terms: "kennel", "kennelling", kennels", "cat", "cattery", "Animal Wardens", "Leigh Dogs and Cats Home", "All4Pets" "Common Fold", "Meresands Kennels and Cattery"

and "Aspen Valley". For the avoidance of doubt, I can confirm that I am happy for you to refine the above search further, to the extent 21/09/2021, 20:20 Gmail - 07608 FOI 5/10 that I only request information held in relation to animals boarded in accordance with the Care Act 2014.

I am not requesting information relating to animals being boarded for other reasons, for example the boarding of seized dogs on behalf of the Council. I would be grateful if you could confirm that the above refinement will ensure that the cost limit for complying with this request is not exceeded."

8. The council responded to the refined request on 20 September 2021 and confirmed that it was maintaining its position in relation to section 12 and, applying section 21, confirmed that other information was accessible via a weblink provided.

Scope of the case

9. On 22 September 2021 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
10. The Commissioner confirmed with the complainant that his investigation would consider whether the council had correctly applied section 12 in relation to their refined request of 20 September 2021, whether it had correctly applied section 21 and whether it correctly confirmed that it did not hold information within the scope of part 6 of the request.

Reasons for decision

Section 1 – duty to provide information held

11. Section 1(1) of the FOIA requires authorities to confirm or deny whether requested information is held and, where it is, to provide it to a requester.
12. Part 6 of the complainant's request asked for the following information:

"A copy of any procedures, policies or contracts in place in relation to the accommodation of people's animals in accordance with the above legislation. This should include details of any welfare provisions stipulated by the Council, details of any procedures for monitoring the animals' welfare, any time limit beyond which the accommodation would

be reviewed and the procedure adopted when the owner dies or relinquishes ownership."

13. The council confirmed that it did not hold any information falling within the scope of this part of the request.
14. The complainant has suggested that it seems unlikely that the council would not hold any written procedures, policies or contracts in accordance with section 47 of the Care Act 2014¹.
15. The Commissioner contacted the council and directed it confirm what searches it carried out for the information and to explain why, if relevant, the information is not held.
16. The council explained that it contacted senior officers in the Social Care department to ask what policies/procedures/guidance were held in relation to section 47 of the Care Act 2014. The council confirmed that officers explained that, due to the infrequent nature of the need to make use of this section, no written process or policy exists.
17. The council explained that the complainant appeared to believe that the council should have a policy for all of its activities. It confirmed that this was an inaccurate assumption and also unfeasible, particularly for cases of animal homing which, based on discussions with relevant officers, the council considers to be "quite rare". As such, the council confirmed, the process would not warrant a policy or procedure and staff simply act in compliance with the requirements of the legislation and procure a service on an ad-hoc basis.
18. Whilst the Commissioner is sympathetic to the complainant's assumption that a written policy would be held, based on the enquiries made by the council and its explanation of why a policy was not required, he is satisfied that the information is not held. He has therefore concluded that, in relation to part 6 of the request, the council complied with section 1(1) of the FOIA.

¹ Section 47 relates to "Protecting property of adults being cared for away from home"; full text is here: <https://www.legislation.gov.uk/ukpga/2014/23/section/47/enacted>

Section 12 – cost of compliance

19. In refusing to provide the information in parts 1-5 of the request, as refined by the complainant on 20 September 2021, the council cited section 12 of the FOIA.

20. Section 12(1) states:

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit".

21. When considering whether section 12(1) applies, an authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the 'Regulations'). These are:

(a) determining whether it holds the information,

(b) locating the information, or a document which may contain the information,

(c) retrieving the information, or a document which may contain the information, and

(d) extracting the information from a document containing it."

22. The Regulations state that the appropriate cost limit is £600 for central government, legislative bodies and the armed forces, and £450 for all other public authorities. The cost limit in this case is £450, which is equivalent to 18 hours' work.

23. Section 12 makes it clear that a public authority only has to estimate whether the cost of complying would exceed the appropriate limit. It is not required to provide a precise calculation.

24. The task for the Commissioner here is to reach a conclusion as to whether the cost estimate made by the council was reasonable; whether it estimated reasonably that the cost of providing the requested information would exceed the limit of £450, that section 12(1) applied and that it was not obliged to comply with the request.

The Council's Position

25. The council confirmed that, in considering the request, it consulted with both finance and social care staff who confirmed that due to the infrequent nature of placements made under section 47 of the Care Act 2014, there was no specific budgetary code for these transactions and as a result it would be necessary to review all Adult Services Invoices to locate the information.

26. The council explained that, through a basic filtering of the spend data available on its website, which shows all payments made by the council, it was able to reduce the number to be reviewed to around 40 thousand codes for Adult Services.
27. The council confirmed that, whilst it could further filter this number to remove certain codes, it explained to the complainant that it could not rule out the possibility that some payments may have been miscoded against a variety of Adult Services budget codes and so could not automatically exclude everything in order to guarantee a full and transparent response. It explained that it would be necessary to recall the invoice for every transaction to identify what it was for and if it was covered by the request or not.
28. The council explained that there are in the region of 40 thousand transactions to review and, allowing for 30 seconds per transaction, it confirmed that it would take around 333 hours simply to identify what relevant information might be held.
29. The council confirmed that the refined version of the request does not help it to reduce the time and cost as it would still be necessary to review all Adult Services payments to capture miscoded entries.
30. With reference to the complainant's refined terms of reference, the council explained that a keyword search is not always indicative of what a payment is made for and would only highlight those payments where those keywords are used within the narrative description or the payee name. It explained that, as the descriptions are free text, such a search would, therefore, potentially return numerous irrelevant entries.
31. To illustrate this, the council suggested that a payment coded as 'miscellaneous' could relate to one or more of the terms suggested by the complainant. It explained that the only way to identify this is to review the specific invoice for that payment to see what the charge was for. It further explained that this, of course, assumes the payment was coded against something general like Miscellaneous rather than a more specific budget code available to Adult Services staff.

The Commissioner's view

32. Under section 12(1) of the FOIA a public authority is not required to comply with the duty in section 1(1) if the cost of doing so would exceed the appropriate limit.
33. Having considered the estimates provided, the Commissioner finds that they are realistic and reasonable. Whilst he is mindful that the council's

methods for recording information do not appear to provide a particularly effective interrogative function, this is a matter for the council rather than a consideration for the Commissioner under section 12(1).

34. The Commissioner has concluded that the cost of complying with the refined request would exceed the appropriate limit. He, therefore, finds that the council correctly applied section 12(1).

Section 16 – advice and assistance

35. Section 16(1) of the FOIA requires authorities to provide advice and assistance to any individual making an information request.
36. Generally, where section 12(1) is cited, authorities seeking to comply with section 16(1) should advise the requester as to how their request could be refined to bring it within the cost limit. The Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice, however, a refusal under section 12(1) is generally a trigger for advice under section 16(1) to be given.
37. In this case the Commissioner considers that the council's initial response failed to provide any advice and assistance. In its internal review the council directed the complainant to the spending data on its website, suggesting that they might be able to access some of the requested information there. In doing this the council cited the exemption in section 21.
38. Having reviewed the council's handling of this request the Commissioner acknowledges the wide-ranging scope of this part of the request, and accepts that there is no easy way of suggesting how it could be refined. This is confirmed by the council's response to the refined request, submitted at the complainant's own initiative.
39. In spite of this, the Commissioner considers that the council should have advised the complainant accordingly and/or it should have advised them that it had considered its duties but could make no suggestions as to how they might refine the request. In failing to do so, the Commissioner finds a breach of section 16.

Section 21 – information accessible by other means

40. The exemption in section 21 provides that information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

41. Information can be said to be reasonably accessible if it has been placed in the public domain and can be obtained without the need for a specific request under section 1.
42. In this case the council confirmed that the information refused under section 12 (see above) could be accessed by searching the spend data on its website. Whilst the council confirmed that it would be unable to provide the entirety of the information within the appropriate limit (as per section 12), the complainant was under no such restriction and was free to interrogate the data to retrieve such information they desired.
43. The council explained that, as part of its considerations under section 12, it had retrieved samples of information from its website which would satisfy the request.
44. Having considered the available evidence the Commissioner is satisfied that the complainant could potentially access such parts of the requested information that are held via the council's website.
45. The Commissioner has concluded that the council correctly applied section 21.

Right of appeal

46. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

47. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
48. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Christopher Williams
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